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### APPLYING TO INDEPENDENT FRAUDULENT TRANSACTIONS STATUTE FORBIDDING USE OF MAILS IN SCHEMES TO DEFRAUD.

If a recent decision by Sixth Circuit Court of Appeals is correct, it would appear that any letter sent through the mail to defraud another or to obtain money or property by a fraudulent pretense makes the sender punishable under the provisions of the federal statute against using the mails in any scheme or artifice to defraud. *Bettman v. United States*, 224 Fed. 819.

That this statute in its original form has been in existence since 1872 and has been but twice amended, first in 1889 and again in 1909, and this seemingly merely to embrace other things in the scheme or artifice to defraud, and that its operation has been confined to businesses organized to commit frauds by aid of the mails, appears not to have impressed the court as a practical construction of the statute.

There has been but one exception to this rule, and that was in the case of *Scheinberg v. United States*, 213 Fed. 757, 130 C. C. A. 271, Ann. Cas. 1914, D. 1258, itself occurring nearly five years after the amendment in 1909. This case is not precisely on all fours with the *Bettman* case, but the two are so very similar, that, possibly, it may be contended that the construction sustaining the one would uphold the other.

The *Scheinberg* case held that sending by mail a false financial statement to commercial agencies with the intent that it should be used as a basis for the purchase of goods on credit was a "scheme or artifice" to defraud within the sense of the statute. But though this should be done by persons generally conducting a legitimate business, yet it is possible to conceive a difference in this from such a case as the *Bettman* case.

This case shows that *Bettman* was president of a corporation which was manufacturing and selling liquors and preserved fruits. To obtain money for the use of the corporation it sent to a brokerage firm in New York engaged in buying commercial paper and placing it with investors, a false financial statement of its affairs and thereby procured the money he sought.

The *Scheinberg* case, it is perceived, showed a purpose to resort to the mails to influence the public through commercial agencies which passed no judgment on the merits of the statement sent through the mails. The *Hartman* case showed an appeal to a particular business firm to secure its approval of a statement. There was no essential difference in this from an application to a particular investor. In the latter case the use of the mail was but incidental and not material. In the former case the use of the mail seemed quite essential. It may be thought, therefore, that the *Scheinberg* case does not necessarily cover the *Hartman* case.

But independently of the distinction attempted by us as to these two cases, it may well be asked whether the statute in its original or amended form meant to apply to casual use of the mail in isolated cases of false pretenses or only to cases where overt acts are needed to prove a scheme or artifice to defraud, for the success of which the United States mail is used as an instrument.

If any fraudulent pretense for the obtaining of money or other thing of value subjects an offender to punishment under this statute solely because he uses the mail to further its accomplishment, the statute seems to us to employ a great deal of unnecessary language. It would have been much simpler to have said that anyone who uses the mail in aid of any fraudulent pretense, representation or promise whereby any money or other thing of value is sought to be obtained from another or the public, shall be punished.

But it does not do this. It denounces the devising or intending to devise any scheme or artifice to defraud and the executing of such scheme or artifice by placing in the mail any letter or advertisement. The use of the word advertisement is certainly in accord with the view of the "scheme or artifice" being of a general nature and including "letter" does not detract from this view.

Furthermore, there is nothing on the face of this statute that points to the invasion of the secrecy of correspondence by mail, except that it be first shown there has been concocted or intended a "scheme or artifice to defraud" and the use of the mails for its furtherance. Other statutes show that in such a case the Postmaster General may issue a fraud order. It hardly might be claimed that because a business legitimately conducted uses the mail in making a fraudulent pretense, this would make it subject to a fraud order, or to make all of its correspondence subject to seizure.

We find it difficult to conceive that the government intended by its legislation to supplement state legislation in the enforcement of its penalties regarding fraud and false pretenses. Rather we think it was intended to prohibit the use of the mails in schemes of a fraudulent character in "deceiving the ignorant and credulous generally by appeals to passion for gain by an untruthful and seductive setting forth of the attractiveness of the schemes exploited." This is a sufficient reason for such legislation, and that no more was intended it seems to us the phraseology of the statute implies. Congress has nothing to do with the enforcement of criminal law as such, but as intent may prostitute the use of a government agency in its accomplishment. It would be a detriment, rather than a benefit, to make private correspondence subject to inspection for merely personal sins of those who take advantage of the use of a governmental agency for the convenience of citizens of different states. The post office establishment is greatly an instru-

mentality for the carrying on of commerce among the states. It has a practical or administrative aspect and nothing more. When legislation reasonably protects this aspect, this is as far as it should be construed to go.

## NOTES OF IMPORTANT DECISIONS.

**BENEFIT SOCIETY—ACTION FOR FRAUD IN CAUSING CHANGE OF BENEFICIARY.**—The Supreme Court of Georgia discusses very interestingly the question of the right of one named as beneficiary in a certificate of a fraternal insurance society to sue another for causing the insured to change the beneficiary therein, said change being effected by false and fraudulent representations. *Mitchell v. Tangley*, 85 S. E. 1050.

It is conceded by the court that the beneficiary in such a certificate has only an expectancy subject to be defeated at any time by the mere will of the insured, but it is said that: "It is not necessary in all cases that there should be a vested right in property or a fund in order to have one who fraudulently diverts it from another who would have received it," liable to such other.

There are a number of illustrative cases cited to support such a principle.

The principle of holding a trustee *ex maleficio* liable to one who would have received a fund but for the intervention of fraud by such a trustee ought to cover such a case. This case somewhat resembles the procuring by fraud and undue influence a testator to change a legatee, which has been held to give a right of action. *Cason v. Owens*, 100 Ga. 142, 28 S. E. 75; *May v. Wood*, 172 Mass. 11, 51 N. E. 191. Ever since it was held that one made himself liable to the owner of a decoy for frightening wild geese away from it, it has been recognized that a status which gives a reasonable expectancy of benefits cannot be unnecessarily interfered with by another, and to use fraud to accomplish a result puts an actor in no better situation. See *Keeble v. Hickeringill*, Holt 16, 17, 18, 11 Mod. 74, 134.

**INSURANCE—INSURABLE INTEREST IN ASSIGNEE CEASING BEFORE LOSS.**—The Supreme Court of Washington holds that where a husband assigns a policy of insurance to his wife and she afterwards obtains a divorce, this does not avoid the assignment because of cessation of insurable interest in the assignee. *Humphrey v. Mutual L. Ins. Co.*, 151 Pac. 100.

This ruling appears to be in accordance with a distinction recognized as existing between fire and life insurance. 16 Am. & Eng. Law, 846. It is said that life insurance is not a contract of indemnity, as is fire insurance, and the rule against wager policies applies to the inception and not the continuance of insurance. *Connecticut M. L. Ins. Co. v. Schaeffer*, 94 U. S. 457.

We greatly doubt whether a technical rule ought to govern so strictly in such cases. Take for example the *Humphrey* case, *supra*, and the reason of the assignment and the consideration therefor was the relation between assignor and assignee. When the consideration passed away the assignment should have been avoided, unless at least there was a pecuniary consideration at the start. The successor wife, in case the insured married again, ought to be provided for as by the intent of the assignor she would have been.

This rule of insurable interest is largely judge-made law and that ought to be more flexible than statute law. It is based supposedly on reason and should accommodate itself to changing circumstances and conditions. Furthermore, if the rule of a wager policy is that one who has no interest in another's life should not possess any interest in his death, why is not that as exigent after the interest in life has passed away as when it began?

**FOOD — MANUFACTURER'S LIABILITY TO USER OF TOBACCO.**—The Supreme Court of Tennessee holds, that as chewing tobacco is not a foodstuff, a manufacturer who supplies his product to the retail trade does not come under the exception to the rule of non-liability to ultimate consumer, where he puts his product on the market. *Liggett & Myers Tobacco Co. v. Cannon*, 178 S. W. 1009.

The court concedes that the exception embraces many articles, and says that to include foodstuffs is comparatively recent and "because of the close analogy of such commodity to drugs." The underlying reason, however, for all of the things coming within the exception is that they are put upon the market in a form that prevents examination into their intrinsic qualities for poisonous or hurtful foreign substances, whether the ultimate purchaser purposes to use them as drugs or foodstuffs. The test is, whether they are designed to be taken into one's system or not. If a drug were to be applied externally instead of taken internally, the one rule as to drugs would apply—

and so should one rule as to everything to be introduced into the body.

For example, the court eliminates tobacco because the desire for it is not natural, as is the desire for food, but the taste for tobacco must be created. Nevertheless, the manufacturer builds his business on the created taste and consumers take the tobacco into their body much in the same way, so far as poison is concerned, as a buyer of tinned beef would take that into his system.

The opinion of the court seems written in the style of doctrinaires, described by Butler in *Hudibras*, who

"Compound the sins they are inclined to  
By damning those they have no mind to,  
And prove their doctrine orthodox  
By apostolic blows and knocks."

#### VALIDITY OF CONTRACTS BETWEEN NEUTRALS AND BELLIGERENTS.

The purpose of this investigation is to furnish our readers with the authorities bearing upon a question which while largely political is, at the same time, likely to become important as a practical question of law.

It will be conceded that a contract in violation of the neutral obligations of a nation would be contrary to the public policy of the government of that nation, and for that reason tainted with such illegality that it would be denied enforcement in its courts.

Neutral obligations arise from four sources: (1) The general principles of International Law; (2) Treaties and Conventions Between Sovereign States; (3) Local Statutes Known as Neutrality Laws; (4) The Proclamations of the Chief Executive of the Nation.

*International Conventions Defining the Obligations of Neutrals.*—The most recent re-statement of international obligations was made at the Second International Peace Conference, held at The Hague, June 15, 1907. This conference adopted fourteen

separate conventions covering practically every important phase of international law. The Fifth Convention, entitled "A Convention Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land," provides as follows:

"Art. 2. Belligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral Power.

"Art. 3. Belligerents are likewise forbidden to erect on the territory of a neutral Power a wireless telegraphy station or other apparatus for the purpose of communicating with belligerent forces on land or sea.

"Art. 4. Corps of combatants cannot be formed nor recruiting agencies opened in the territory of a neutral Power to assist the belligerents.

"Art. 5. A neutral Power must not allow any of the acts referred to in Articles 2 to 4 to occur on its territory. It is not called upon to punish acts in violation of its neutrality unless the said acts have been committed on its own territory.

"Art. 7. A neutral Power is not called upon to prevent the export or transport, on behalf of one or other of the belligerents, of arms, munitions of war, or, in general, of anything which can be of use to an army or a fleet.

"Art. 17. A neutral cannot avail himself of his neutrality, (a) if he commits hostile acts against a belligerent; (b) if he commits acts in favor of a belligerent, particularly if he enlists in the ranks of the armed forces of one of the parties.

"Art. 18. The following acts shall not be considered as committed in favor of one belligerent in the sense of Article 17: Supplies furnished or loans made to one of the belligerents, provided that the person who furnishes the supplies or who makes the loans lives neither in the territory of the other party or in the territory occupied by him, and that the supplies do not come from these territories."

The thirteenth Hague convention, entitled "A Convention Concerning the Rights

and Duties of Neutral Powers in Naval War," contains the following sections of interest to us in this investigation, to-wit:

"Art. 6. The supply, in any manner, directly or indirectly, by a neutral Power to a belligerent Power, of warships, ammunition, or war material of any kind whatever, is forbidden.

"Art. 7. A neutral Power is not bound to prevent the export or transit, for the use of either belligerent, of arms, ammunition, or, in general, of anything which could be of use to an army or fleet.

"Art. 8. A neutral government is bound to employ the means at its disposal to prevent the fitting out or arming of any vessel within its jurisdiction which it has reason to believe is intended to cruise, or engage in hostile operations against a Power with which that government is at peace."<sup>1</sup>

It is to be observed from these conventions that so far as the neutral government itself is concerned, it is expressly forbidden to furnish military supplies of any character to a belligerent. This rule is in contradiction of the position taken by our Government in 1870 in the sale of ordnance stores to agents of the French Government. But such action to-day would be contrary to our neutral obligations, as above set forth, and their observance recently by the President of the United States in refusing to permit agents of any of the governments engaged in the present European war to purchase a quantity of discarded rifles in the possession of the War Department has served to direct attention to the change made in international rules concerning such governmental transactions with belligerents.

*The Neutrality Laws of the United States.*—Every government, whether a party to The Hague Conventions above set forth or not, is at liberty to make other

(1) For full text of the Hague Conventions see Wilson on International Law (1910), p. 515 et seq.

regulations or prohibitions not inconsistent therewith.

The only reference in the Hague conventions to such additional municipal regulations is to be found in Article 9 of the Fifth Convention to this effect:

"Every measure of restriction or prohibition taken by a neutral Power in regard to the matters referred to in Articles 7 and 8, must be impartially applied by it to both belligerents."<sup>2</sup>

The neutrality obligations of the United States may, with the above limitations, be determined by Acts of Congress or by Proclamations of the President.

The Neutrality Act of 1794 which, with some changes, is still in force in the United States, was passed by Congress at the suggestion of President Washington at the time when England and France were at war. So strong, however, was public sympathy in this country in favor of the French cause that to pass this Act in the Senate required the deciding vote of the Vice-President.

This Act<sup>3</sup> specifies five general breaches of neutrality:

First, to accept and exercise a commission to serve a foreign state in war, by land or sea, against any states or people with whom the United States are at peace.

Second, to enlist or hire another to enlist, in the service of any foreign states as a soldier, or seaman, on board any vessel of war.

Third, to fit out and arm or knowingly is concerned in the furnishing, fitting out or arming of any vessel, with intent that such vessel shall be employed in the service of any foreign state to commit hostilities against the citizens or property of any foreign state or people with whom this Government is at peace.

Fourth, to increase or augment the force of any ship of war in the service of a foreign state at war with any foreign state or people with whom the United States are at peace, by adding to the number of guns of such vessel, or by adding thereto any equipment solely applicable to war.

Fifth, to set on foot within the territory of the United States or prepare the means for any military expedition to be carried on from thence against the territory of any foreign state or people with whom the United States are at peace.

The proclamation of the President at the opening of hostilities in the present European war added nothing to the principles and rules set forth in The Hague Conventions and the Neutrality Laws of the United States, and, therefore, there would be no reason to set forth the terms of such proclamations in this article.

*Contracts in Aid of Insurrectionary Movements Against the Government of a Foreign State.*—Our purpose in this article is to consider what contracts made for the purpose of aiding foreign belligerents will be held void in the courts of a neutral nation. Strangely, the greater number of cases discussing such questions arise out of the enforcement of contracts in aid of insurrectionary movements against the government of a foreign state.

One of the earliest cases at the common law involving this question was the case of *De Wutz v. Hendricks*.<sup>4</sup> In this case the defendant was employed by plaintiff to negotiate a loan to assist the cause of the Greeks against the Government of Turkey. The loan failed, but plaintiff, a representative of the Greek revolutionists, sought to recover in trover for certain property, scrip and engravings turned over to defendant, and for damages for their detention. The court held the contract illegal as against public policy. Chief Justice Best, who tried the case, *nisi*, declared the opinion of the court on appeal. The learned Judge said:

"I then thought that it was contrary to the law of nations for persons residing in

(2) The provision of Article 7 is set forth supra. Article 8 refers to restrictions on telegraph and cable service.

(3) Sections 5281 to 5291. Rev. Stat. 1878.

(4) 9 Moore's C. B. 586.

this country to enter into engagements to raise money, by way of loans, for the purpose of supporting subjects of a foreign state in arms against a government in alliance with our own; and that no right of action could arise out of such transaction. A case in circumstances precisely similar to the present, except that a different loan was proposed to be raised, was lately decided in the Court of Chancery in which the Lord Chancellor entertained the same opinion as myself, and in which he is stated to have said, that the English Courts of Justice will not take notice of, or afford any assistance to persons who set about raising loans for subjects of the King of Spain, to enable them to prosecute a war against that sovereign; or, at all events, that such loans could not be raised without the license of the Crown."

A somewhat similar case in this country is that of *Kennett v. Chambers*,<sup>5</sup> decided by the United States Supreme Court in 1852. In this case certain American citizens loaned a sum of money to an officer of the Texas Government after Texas had declared its independence. The declared purpose of the loan was to enable the Texas Government to buy munitions and equipment for its military forces then engaged in war with Mexico. The complainants sought to enforce in the United States courts the agreement to deed to them certain Texas real estate in payment of the loan. The court, in denying relief, held that the loan being for the express purpose of aiding in revolutionary military operations against a nation with which the United States was at peace, was illegal and void as being contrary to public policy. Chief Justice Taney, who delivered the opinion of the court, after first pointing out the fact that Texas had as yet not been recognized as an independent nation by our Government, and that the Chief Executive had declared that the Government of the United States would remain neutral in the controversy, said:

"This being the attitudes in which the Government stood, and this its open and

avowed policy, upon what grounds can the parties to such a contract as this come into court of justice of the United States and ask for its specific execution? It was made in direct opposition to the policy of the Government, to which it was the duty of every citizen to conform. And while they saw it exerting all its power to fulfill in good faith its neutral obligations, they made themselves parties to the war, by furnishing means to a general of the Texan army, for the avowed purpose of aiding and assisting him in his military operations."

The court then proceeds to show that contracts to be invalid as a breach of neutrality do not necessarily have to come within the prohibitions of the Neutrality Laws. On this point the learned Judge says:

"But the decision stands on broader and firmer ground, and this agreement cannot be sustained at law or in equity. The question is not whether the parties to this contract violated the neutrality laws of the United States, or subjected themselves to a criminal prosecution; but whether such a contract, made at that time, within the United States, for the purposes stated in the contract, and the bill of complaint, was a legal and valid contract, and such as to entitle either party to the aid of the courts of justice of the United States to enforce its execution.

"The intercourse of this country with foreign nations, and its policy in regard to them, are placed by the Constitution of the United States in the hands of the Government, and its decisions upon these subjects are obligatory upon every citizen of the Union. He is bound to be at war with the nation against which the war-making power has declared war, and equally bound to commit no act of hostility against a nation with which the Government is in amity and friendship. *And he can do no act nor enter into any agreement to promote or encourage revolts or hostilities against the territories of a country with which our Government is pledged by treaty to be at peace, without a breach of his duty as a citizen, and the breach of the faith pledged to the foreign nation. And if he does so, he cannot claim the aid of a court of justice to enforce it.*"

In this case, as in the early English case last cited, we must be careful to note that,

(5) 14 How. (U. S.) 38.

however broad the language of the court may be, the decisions in both cases are limited to contracts in aid of rebellious or revolutionary enterprises against a friendly nation, and not contracts in aid of military enterprises of one independent nation against another. It is interesting, however, to note that in this connection the court in the Kennett case anticipated the suggested distinction without passing on its tenableness. The court said:

"But it has been urged in the argument that Texas was in fact independent, and a sovereign state at the time of this agreement; and that a citizen of a neutral nation may lawfully lend money to one that is engaged in war, to enable it to carry on hostilities against its enemy. It is not necessary in the case before us to decide *how far the judicial tribunals* of the United States would enforce a contract like this, when two states, acknowledged to be independent, were at war and this country neutral."

*Contracts in Aid of the Military Operations of One Belligerent Nation Against Another.*—Why there should be any material distinction between the legality of contracts directly in aid of military operations organized within a foreign government and those operating from without is difficult to see. If Canada decided to throw off the imperial yoke, for instance, would not our citizens have the same right to loan her citizens money and sell her merchandise as they enjoy to-day? Neither war between nations nor insurrections within a single nation in any way limits or enlarges the rights of neutrals to deal commercially with either of the belligerent forces. There is this distinction, however, between the two cases, that citizens of a neutral country could not contract with any government or the agency of any government not recognized by his own government.

In the case of *The Laurada*, 85 Fed. Rep. 760, a much-quoted case on the subject of the right of commerce between neutrals and belligerents, the court gives ex-

pression, rather too broadly, perhaps, to the general rule, to-wit:

"It is not the purpose of the neutrality laws in any manner to check or interfere with the commercial activities of citizens of the United States or of others residing in the United States and interested in commercial transactions. Mere commercial ventures in contraband are not prohibited by these laws. Nor is it an offense under the neutrality laws to transport unassociated persons from the United States to a foreign country, although they have a known intent to enlist in foreign countries, or to transport such persons, so intending to enlist, and munitions of war, in the same ship. In these and other instances, serious embarrassment may result to a friendly Power, engaged in hostilities, by reason of the men, munitions, arms and engines of war furnished to its enemies from this country. But such traffic and transportation, though liable to interruption through capture by the friendly Power for its own protection, involve no breach of real neutrality on our part, and are permitted by our laws out of consideration for the commercial prosperity of the people."

This strong statement of the rights of neutral citizens to contract with belligerents seems to be supported in the main by the authorities cited in the note and which we have not the space here to discuss at length.<sup>6</sup>

In other words, a state of war does not affect a neutral's rights of commercial intercourse. He may sell ships, guns, munitions, loan money and extend credit to any belligerent just as he could before the declaration of war. The only difference in the commercial situation lies in the difficulty to make delivery of articles declared to be contraband. Thus in *Wharton International Law*<sup>7</sup> it is said:

"If a ship of war is built and fitted out in the United States and there *bona fide* sold, *purely* as a commercial speculation, to a belligerent, there would be no intent that she should cruise against friendly

(6) *Wiborg v. United States*, 163 N. S. 632; *The Carondelet*, 37 Fed. Rep. 799; *The Santissima*, 7 Wheat. 283.

(7) Sec. 439e.

commerce; and thus no breach of neutrality would be committed. Ships of war, and arms are articles of commerce, and neutrals are entitled to continue their ordinary commerce with belligerents, subject to the risk of their goods being captured, if they are contraband."

*Illegality of Contract or Transaction Consisting in the Expressed Intent to Aid the Military Operations of a Belligerent.*

—Out of some confusion in the opinions there seems to appear quite clearly the rule that the illegality of any contract or transaction regarded as a violation of neutrality consists in the intent with which the act is done or the express purpose to effect which the contract was entered into. If it is purely a commercial venture and no purpose is expressed to aid the military operations of one nation against another, one may contract with a belligerent as he could if that same nation were at peace. His sale of munitions or extensions of credit are commercial transactions until he sees fit to make them otherwise by expressing the purpose thereby to aid the belligerent party to the contract in his military operations.

This distinction was an element in the decision in the Kennett case which has often escaped the commentators. The argument was made that the loan extended to Texas in aid of its military operations was a mere commercial transaction for the purchase of lands in Texas. The court held that if this had been so, or if it had appeared to be so from the face of the contract, there could have been a recovery. On this point the court said:

"The advance of money which they agreed to make for military purposes was, in fact, made and intended to be made in Cincinnati, by the delivery of their promissory notes, which were accepted by the appellee as payment of the money. This appears on the face of the contract. And it is this advance of money for the purposes mentioned in the agreement in contravention of the neutral obligations and policy of the United States, that avoids the contract. The mere agreement to accept a conveyance of land in Texas, for a valu-

able consideration paid by them would have been free from objection."

In Rose's Notes on the United States Reports (Vol. 5), at page 222, the learned author states:

"A contract the consideration of which is used for purposes in contravention of the neutral obligations of the United States, is not void, unless such purposes form part of the agreement.

That this element of intent must be present in all questions of illegality affecting contracts is a familiar rule of the common law. Thus, if a man extends a loan to a participant in a poker game for the express purpose of enabling him to lay a bet on the game, he cannot recover his loan because of the illegal purpose expressed in making the loan, while, on the other hand, if the same loan were made without any such express purpose, the loan would be good without regard to the use to which the money was put.

The important element of intent in such transactions is also acknowledged by Sir Sherston Baker in his third edition of Halleck's International Law in discussing the validity of loans made by a neutral to a belligerent. On this point the learned English author says:

"The next question to be considered is whether neutrals may assist a belligerent by money in the shape of a loan or otherwise without violating the duties or departing from the position of neutrality. It seems to be universally conceded that if such loan be made for the manifest purpose of enabling the belligerent to carry on the war, it would be a virtual concurrence in the war, and, consequently, a just cause of complaint by the opposite party. \* \* \* The English courts have decided that such loans are in violation of international law, and that they will take no notice of, nor render any assistance in any transactions growing out of such loans, unless raised with the special license of the Crown."<sup>8</sup>

(8) Halleck's Int. Law, 3rd Ed., Vol. 2, p. 163; citing judicial decisions and also opinions of British Law Officers with respect to the validity of subscriptions in aid of Poland in its war of liberation.

In conclusion we are safe in stating the rule to be that contracts with neutrals that openly violate any treaty or convention, or any of the provisions of the Neutrality Act or Executive proclamations are illegal on grounds of public policy and will not be enforced by the courts. On the other hand, all transactions of a commercial nature with belligerents, whether for extensions of credit or the sale of war material, are free from objection unless made with the express purpose to aid one of the belligerent parties as against the other and not as a purely commercial transaction.

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RELEASE—JOINT TORT-FEASORS.

State to Use of COX et al. v. MARYLAND  
ELECTRIC RYS. CO.

Court of Appeals of Maryland. June 22, 1915.

95 Atl. 43.

Plaintiffs, in an action for wrongful death, recovered damages against the employer of their decedent, and entered a settlement of the suit as upon compromise. They thereafter brought action against defendant for the death of their decedent, alleging that it was caused through defendant's negligence. Held, that the settlement of the first suit against decedent's employer was a complete bar to the action against defendant in the second action, notwithstanding that the defendants in the two actions were not joint tort-feasors, as plaintiff could have but one satisfaction for the wrong.

PATTISON, J. This suit was brought, under Article 67 of the Code, by the appellants, the widow and infant children of George C. Cox, a lineman of the Chesapeake & Potomac Telephone Company, for damages resulting from the alleged negligence of the defendant, causing the death of the said George C. Cox while in the employment of the said Chesapeake & Potomac Telephone Company. In addition to the general issue plea, the defendant filed a further plea in which, briefly stated, it is alleged that the plaintiff had previously instituted, in the Court of Common Pleas of Baltimore City, a suit against the Chesapeake & Potomac Telephone Company to recover damages for the same tort which is the alleged

cause of the present action, and that the said Chesapeake & Potomac Telephone Company appeared and pleaded to said suit, which was thereafter compromised and settled by the payment of the sum of \$2,527.20 to the plaintiffs by the said Chesapeake & Potomac Telephone Company, which was duly acknowledged in said proceedings and the entry made therein, "Agreed and settled and all claims therein satisfied." A copy of said proceedings, including the aforesaid declaration, a power of attorney from the plaintiffs to their attorney in that suit, and the docket entries, was filed with and made part of said plea. In reply to this second plea, the plaintiffs filed their first and second replications, in which they do not deny the institution of the suit aforesaid, or that the declaration therein stated a different cause of action from that mentioned in the plea, or that the said suit was compromised and settled as stated in the plea. They admit the payment to them by the defendant in that suit of the aforesaid sum, but deny that it was paid to or received by them for the tort aforesaid, and claim that it was paid to them as beneficiaries of George C. Cox from the relief fund of the employees' pensions, disability benefits, and insurance fund, of which association the said George C. Cox was a member, either as insurance or for three years' wages to said Cox, to which they were entitled from such fund, and that the suit against the Chesapeake & Potomac Telephone Company was instituted to recover such insurance or wages, and not to recover damages sustained by them by reason of the death of the said George C. Cox; and in their replication they allege that the death of the said George C. Cox was not caused by the negligence of the Chesapeake & Potomac Telephone Company. A demurrer was interposed to these replications, but it was overruled, and the defendant thereafter filed its rejoinders. Issues were thereafter joined, and the case proceeded to trial. At the conclusion of the plaintiff's testimony the defendant offered three prayers, each of which asked the court to direct the jury to render a verdict for the defendant; the first, because of a want of legally sufficient evidence entitling the plaintiffs to recover; the second, because of a want of legally sufficient evidence under the pleadings entitling the plaintiffs to recover, and the third, because of contributory negligence on the part of the deceased, George C. Cox. The first and second prayers were refused, the third prayer was granted, and a verdict was rendered for the defendant, upon which a judgment was entered. Exceptions were taken to the ruling of the court upon the

granting of the defendant's third prayer and to the rulings of the court upon the admission and rejection of certain testimony offered in the trial of the case, and from the judgment so entered an appeal was taken.

The main questions here presented are: First, whether the prior settlement between the equitable plaintiffs and the Chesapeake & Potomac Telephone Company, as disclosed by the pleadings, is a bar to this action; second, whether Cox is shown to have been guilty of contributory negligence. If the first of these questions is decided in the affirmative, then it will be unnecessary for us to consider and pass upon the second or upon the rulings on the admission and rejection of the testimony.

The aforesaid power of attorney executed by the appellant, Emma P. Cox, as widow and as mother and next friend of the infant children of George C. Cox, deceased, not only appointed Carter Lee Bowie as attorney to institute said suit, but it authorized him to prosecute it—

"to a verdict or to compromise and settle the said suit for the sum of \$2,527.20, to be paid by the Chesapeake & Potomac Telephone Company, of Baltimore City, from its employees' benefit fund or otherwise, and to enter said suit and the cause of action 'Agreed and settled and all claims therein satisfied.'"

Pursuant to such authority, the suit was compromised by the defendant paying to the plaintiffs the aforesaid sum of \$2,527.20, and the case was marked:

"Agreed and settled on terms, defendant to pay costs by order of the plaintiff's and defendant's attorneys filed."

The replication goes only to the extent of saying that the proceedings in the former suit, which are to be considered part of the plea, are not what they purport to be; that although their declaration therein discloses that the suit was instituted by them, which resulted in the compromise and settlement aforesaid and the payment to them of the said sum of \$2,527.20, was to recover damages for the death of George C. Cox, "caused by the negligence of the defendant and its failure to perform the duty which it owed to him," yet the replication alleges that such suit was not instituted to recover such damages, and denies that the death of George C. Cox was the result of the negligence of the defendant, and that said sum paid to and received by them was not in settlement of damages suffered by them of the death of George C. Cox, but that it was the insurance to which they were entitled as his

beneficiaries, or was for three years' wages, due and payable to them from said relief fund, as stated. And this is claimed by them notwithstanding the fact that Mr. Bowie was authorized—

"to compromise and settle the said suit for the sum of \$2,527.20, to be paid by the Chesapeake & Potomac Telephone Company, of Baltimore City, from its employees' benefit fund or otherwise, and to enter said suit and the cause of action, 'Agreed and settled and all claims therein satisfied.'"

[1] The entering of the suit "settled" was done under the eye and with the sanction of the court, and should be considered as a judicial act not open to question or controversy in any collateral proceeding. *Clark v. Southern Can Co.*, 116 Md. 95, 81 Atl. 271, 36 L. R. A. (N. S.) 980. And thus the effect of such settlement and entry cannot be changed or altered, as here attempted by the plaintiffs. The demurrer to the replication should have been sustained. *Morris v. Travelers' Ins. Co. (C. C.)*, 189 Fed. 211.

[2] But is the plea a good one, and is it a bar to the plaintiff's right to recover? It is contended by the plaintiffs that it—

"falls to state that defendant is a joint wrongdoer with the Chesapeake & Potomac Telephone Company, and for such reason it is bad."

The authorities are not altogether in accord upon this question. In some jurisdictions it has been held essential that the party to whom a release has been given, or with whom a settlement has been made, shall be one of two or more joint tort-feasors in order to discharge the others from liability. *Pittsburgh Ry. Co. v. Chapman*, 145 Fed. 886, 76 C. C. A. 418; *Ky. Bridge Co. v. Hall*, 125 Ind. 220, 25 N. E. 219; *Thomas v. Central R. R. N. J.*, 194 Pa. 511, 45 Atl. 344; *M. K. & T. R. R. Co. v. McWherter*, 59 Kan. 345, 53 Pac. 135. While in other states, including Maryland, it is not essential that the party with whom the settlement is made, or by whom the release is given, shall be a joint tort-feasor in order to release the others from liability. *Gunther v. Lee*, 45 Md. 67, 24 Am. Rep. 504; *Berkley v. Wilson*, 87 Md. 222, 39 Atl. 502; *Cleveland v. Bangor*, 87 Me. 269, 32 Atl. 892, 47 Am. St. Rep. 326; *Brown v. Cambridge*, 3 Allen (Mass.) 474; *Tompkins v. Clay St. R. R. Co.*, 66 Cal. 163, 4 Pac. 1165; *Brewer v. Casey*, 196 Mass. 384, 82 N. E. 45; *Leddy v. Barney*, 139 Mass. 394, 2 N. E. 107; *Hubbard v. St. L. & M. Ry. Co.*, 173 Mo. 249, 72 S. W. 1073. This court said in

Gunther v. Lee, *supra*, quoting from Lovejoy v. Murray, 3 Wall. 1, 18 L. Ed. 129:

"When the plaintiff has accepted satisfaction in full for the injury done him, from whatever source it may come, he is so far affected in equity and good conscience that the law will not permit him to recover again for the same damages."

And in Berkley v. Wilson, *supra*, in which the court was discussing a plea similar to the one in this case, the court said, speaking through Judge Fowler:

"Whether the wrongdoing complained of in the former case be the joint act of Bunnecke and the defendants, or the several tort of each, can make no difference in determining the validity of the plea or the admissibility of the record in evidence in this case. If the defendants and Bunnecke had both been sued in the first case for the injury there alleged, there could, of course, have been but one recovery. And it would seem to be very clear, upon reason and authority as well, that the same result must follow when the same injury is caused by the independent acts of several wrongdoers. The reason of this rule is apparent. It is neither just nor lawful that there should be more than one satisfaction for the same injury, whether that injury be done by one or more. Cleveland v. Bangor, 87 Me. 264, 32 Atl. 892, 47 Am. St. Rep. 326; Brown v. Cambridge, 3 Allen (Mass.) 474; Lovejoy v. Murray, 3 Wall. 1, 18 L. Ed. 129; Gunther v. Lee, 45 Md. 67, 24 Am. Rep. 504. In the case first cited Whitehouse, J., speaking for the Supreme Judicial Court of Maine, said: 'No sound reason has been given; and it is believed none can be assigned, for such a distinction between the cases of wrongdoers who are jointly and severally liable, and those who are only severally liable for the same injury. In either case, the sufferer is entitled to but one compensation for the same injury, and full satisfaction from one will operate as a discharge of the others.'"

The settlement of the aforesaid suit against the Chesapeake & Potomac Telephone Company, by the payment by it of the said sum of \$2,527.20, is a complete bar to the right of the plaintiffs to recover in this case. The judgment of the court below will therefore be affirmed.

Judgment affirmed, with costs to the appellee.

NOTE.—Settlement with One not Liable as Joint Tort-feasor as Barring Action Against Others.—It seems the same to settle with a tort-feasor not jointly liable with others claimed against as to settle with one not liable at all. Thus, in City of Louisville v. Nicholls, 158 Ky. 516, 165 S. W.

665, it appears that a suit was brought against an abutting owner of property and a city for injuries to a pedestrian because of a stone in a street causing injury. Liability of the city was claimed for permitting the stone to remain on the sidewalk and against the owner for placing it there. Both were sued, but settlement was made with the abutting owner. It was ruled that the amount received from the abutting owner must be taken as satisfaction only in so far as he was concerned. It was, therefore, credited on the recovery against the city. It was also stated that: "There is not sufficient competent evidence in this case to show that Starks (abutting owner) caused the stone upon which plaintiff was injured to be placed on the sidewalk," but this fact does not appear to have controlled, solely, the ruling made.

In Pittsburgh Rys. Co. v. Chapman, 145 Fed. 886, 76 C. C. A. 418, Third Circuit Court of Appeals, the plaintiff was an employee of the Baltimore & Ohio R. Co., and he brought suit against a street car company for injury by coming in contact with a trolley wire permitted to remain in a dangerously low position over the railroad of his employer, where it crossed the street car track. It was claimed that the railroad was a joint or concurrent tort-feasor in permitting this unsafe condition to remain, and the release given to the railroad enured to the release of the street car company. There was motion for judgment *non obstante veredicto*, and the reasons given by the trial court for overruling the motion were sustained. Those reasons were that: "The negligence of the defendant (street car company), averred in the statement and established by the proof, was the act of placing its wires an unsafe distance above the railroad tracks. This was a positive act of commission, in the doing of which the railroad company had no part. It may be the latter company was also liable to the plaintiff in failing to notify him of the presence of the wire, but such liability, if it existed, is based on different grounds, namely a negative act of omission by the railroad and not a positive act of commission. It suffices to say that it is not shown that the railroad company was liable as a joint tort-feasor and in the absence of such proof, the burden of showing which is on defendant, a release of the railroad company by the plaintiff did not release the defendant." This case was tried in Pennsylvania and there was cited to this ruling Thomas v. Railroad Co., 194 Pa. 511, 45 Atl. 344, but this decision if disagreed to, could have been ignored under the principle that the question was one of general law.

In the Thomas case, where one of two railroads was sued, it was said: "The negligence of (the other railroad) in making up this train of empty cars, if not the proximate, was, at least, a concurrent cause of the accident, and the court erred in excluding evidence of a settlement and release by the plaintiff of the joint tort-feasor. But there was no evidence that the (other railroad) was negligent. (Then are stated the reasons therefor.) The evidence of the release of the (other railroad) was therefore irrelevant." Here it is perceived the Pennsylvania court implies that before is reached the proposition treated by the Chapman case it is necessary to show negligence in the releasee.

In Bridge Co. v. Hall, 125 Ind. 220, 25 N. E.

219, appellant claimed that another company was jointly liable with it for the injury sued for, and having released the other company appellant also was released. The court merely states that: "The evidence fails to show that appellee ever made any demand against that company for damages on account of the injury, or ever claimed that it was in any way responsible for the accident. The circumstances proven, brought out by the appellant, show to the contrary." There is not much of a definite character in this ruling, but it is implied that there must be a claim and not payment of a mere gratuity, and that payment was a gratuity was shown by testimony.

In *Railroad Co. v. McWherter*, 59 Kan. 345, 53 Pac. 135, the various authorities, pro and con, to the proposition of one not in any way liable being released as or not affecting the liability of the real wrongdoer are treated, and it concurs with the rulings in cases, that it does not. It is to be noted that among the states holding that a release to anyone claimed by plaintiff to be jointly liable, whether actually so or not, enures to benefit of all wrongdoers in Pennsylvania, but that was an early case and must be considered overruled by the *Thomas case*, *supra*.

The cases holding for release say that the mere fact of making a claim coupled with satisfaction is a bar to an action against the wrongdoer really liable ought not to be controlling considering the advance in jurisprudence, which now takes into account comparative negligence. Indeed, the doctrine of comparative negligence ought greatly to recast views on this subject, because this doctrine makes plaintiffs and defendants stand before the court differently than before. They are there according to the real circumstances of transactions and not according to technical aspects. One joint tort-feasor might, if sued alone, be held liable severely and for the full damage inflicted and for punitive damages thereon, while if another had been sued, circumstances of mitigation might appear and the damages apportioned. Technical rules ought not to interfere with verdicts according to true merits. Many things might be adduced which tend to show that these technical judge-made rules should be restrained rather than extended. C.

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### CORRESPONDENCE.

#### SUGGESTION FOR UNIFORM COMPENSATION LAW LEGISLATION.

*Editor Central Law Journal:*

In issue No. 13, Vol. 81 of September 24th, 1915, you, under Items of Professional Interest, have an editorial on the subject of "Uniformity in Workmen's Compensation Laws."

I recently had a case under workmen's compensation law in the State of Michigan. I am of the opinion the laws are hardly just in so far as I have examined them. I have on my desk the Workmen's Compensation Laws of the States of Illinois, Indiana, Michigan and Oregon.

The Illinois law provides, in case of death, with no dependents, burial expenses not to exceed \$150; the Indiana law provides burial expenses not to exceed \$100; the Michigan law provides reasonable expense of last sickness and burial expense not exceeding \$200; and the Oregon law provides burial expenses of \$100. From these I am compelled to the conclusion that a single man having no dependents on him would be more likely to receive employment than a married man.

To illustrate my point I cite the Michigan case. There a young man, just after having reached his majority and having been educated by his father and mother, left his home to seek employment elsewhere. The next thing that was heard from him he was found dead with his workman's clothing on in the shop of his employer in Detroit, Mich. No person saw the accident; no one knew a thing about it. As a matter of course, neither his father nor mother were dependent on him. He had no brothers or sisters who were dependent on him and was a single man, yet under the law all the compensation the father and mother could get was \$200. It is self-evident that the young man did not commit suicide. I believe there ought to be some way that the parent might receive some compensation other than afforded by these laws under such circumstances and with a uniform system for all the states, I believe the matter should be taken up by the commission and worked out.

There is no parent who is in fairly good circumstances who is going to swear, for the sake of receiving compensation under such circumstances, that it was at all dependent on the son or daughter, as the case might be. I am just suggesting this, thinking, perhaps, it might properly be worked out under a uniform system.

Yours truly,

CHARLES HAMILTON PETERS.

Knox, Ind.

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### BOOK REVIEW.

#### UNITED STATES MINING STATUTES, ANNOTATED.

The United States Bureau of Mines has just issued Bulletin 94, "United States Mining Statutes Annotated," in two volumes, which is now being sold by the Superintendent of Documents, Government Printing Office, Washington, D. C.

This bulletin is a compilation of all sections of the United States Revised Statutes

and of all acts of Congress relating to mines, mining, mineral lands and the mining industry of the public lands. It is intended for persons engaged in mining enterprises that come within the scope of Federal mining laws and as a guide as to the determination of mining rights and duties. It shows the status of every Federal mining law, both laws relating to metal mining and those relating to coal, oil and phosphate and to mining on public, Indian and railroad lands.

The bulletin relates only to the United States mining laws and does not include any of the laws of the different states in regard to mining. Another bulletin which the Bureau of Mines hopes to print in the future will contain the state laws.

In addition to the Revised Statutes and the acts relating to metal, coal, and oil and gas, acts relating to the following subjects, as they bear upon the mining industry are included: Alaska, Indian Lands, Lead Mines, Philippine Islands, Pipe Lands, Railroad Grants, Rights of Way, Salines and Salt Springs, Settler's Relief Acts, State and Public Grants, Stone Lands, Timber Cutting for Mining Purposes, Town Sites, Tunnel Acts, and Withdrawals.

All sections and acts are annotated. These consist of abstracts of decisions of all courts and public officers wherein any of these sections or statutes are explained, construed and applied. The annotations are arranged under each section or statute with appropriate title lines in definite order, and consist of plain propositions of law, and point out how the courts have cured many defects, made clear the uncertainties, and aided in the practical application of these statutes. The large number and wide range of these decisions show that the practical value of the mining laws depends on their present status as established by the courts. The person interested is thus aided in determining the course to pursue in applying any given act to his mining enterprise.

The preparation of these annotations involved an examination of more than 2,000 volumes of reports of various courts and public officers. The work is indexed and any desired subject may readily be found.

The preparation and publication of this bulletin have been so expensive, it has been necessary to place a price of \$2.50 on the two volumes. The volumes are cloth bound, contain 1,772 pages, and may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D. C.

## HUMOR OF THE LAW

"Why do you want a new trial?"

"On the grounds of newly discovered evidence, your Honor."

"What's the nature of it?"

"Our client dug up \$400.00 that we didn't know she had."

County Justice—I'll have to fine ye a dollar, Jeff.

Jeff—I'll have to borrow it of ye, Judge.

County Justice—Great snakes! It was only to git a dollar I was fining ye. Git out! Ye ain't guilty, anyway.—Philadelphia Bulletin.

"My grandfather," said the old-timer, "used to put all his money in his stocking."

"Wa-al, things hain't changed much," said his old friend. "My grandson, who's takin' a course in law at one o' them Eastern colleges, puts most all his money into socks."—Judge.

Recently a St. Louis quartet sang at Jefferson City, and while the singers were there they were asked to sing for the prisoners at the penitentiary. They were glad to do so, and 2,400 prisoners applauded them enthusiastically when they appeared. After their concert one of the prisoners who was especially enthusiastic, said to Mr. Westhus, the tenor:

"We have tried to organize a quartet in the prison, but we have no tenor. I wish you were here."

It was flattering, of course; but Mr. Westhus was sorry not to feel like supplying the omission.—St. Louis Post-Dispatch.

Representative Martin B. Madden, in an address in favor of woman suffrage, said:

"It seems to me that the men who oppose the suffrage are selfish. They want to have the best of everything without paying for it. They remind me of the clerk.

"A clerk and a lawyer were on their way downtown on the trolley the other morning, when the lawyer looked up from his paper and said:

"My, that's a pretty girl over there in the corner."

"The clerk looked up from his paper in his turn. Then he smiled.

"I know her," he said. "I know her well."

"Holy smoke, man," said the lawyer, "if you know her, why don't you go over and sit with her?"

"I will," the clerk answered, "as soon as she pays her fare."—Washington Star.

## WEEKLY DIGEST

**Weekly Digest of ALL the Important Opinions  
of ALL the State and Territorial Courts of  
Last Resort and of ALL the Federal Courts.**

*Copy of Opinion in any case referred to in this digest may be  
procured by sending 25 cents to us or to the West Pub. Co., St.  
Paul, Minn.*

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1. **Admiralty**—Jurisdiction.—Jurisdiction of admiralty courts held not exclusive, so as to prevent application of Workmen's Compensation Act, where persons employed in this state were killed on the high seas or the navigable waters of another state.—*Kennerson v. Thames Towboat Co., Conn.*, 94 Atl. 372.

2. **Adoption**—Statutory Construction.—Statutes allowing a single parent having the lawful custody to consent to adoption of the children of the marriage in case of divorce or separation should receive a liberal construction.—*Seibert v. Seibert, Iowa*, 153 N. W. 160.

3. **Adverse Possession**—Improvements.—The possession of a small triangular lot between a store and street by paving and using it for access to the store is sufficiently notorious to support adverse possession.—*Bensdorff v. Uhllein, Tenn.*, 177 S. W. 481.

4.—**Overlapping**.—Possession under a junior patent, boundaries in which interlock with senior patent, extended to the interlock, if the interlock was within an exception in the senior patent; otherwise, actual possession of the interlock was essential.—*Williams v. Smith, W. Va.*, 85 S. E. 546.

5. **Animals**—Lien of Agister.—One pasturing cattle for a purchaser, who had given a note and a chattel mortgage for the purchase money and who had agreed to pay \$600 on account of pasturage, had a lien upon the cattle remaining in his possession as against the purchaser as security for his debt.—*Harp v. Hamilton, Tex.*, 177 S. W. 565.

6. **Assault and Battery**—Defense of Home.—One unaware that persons entering his dwelling are officers, supposing them mere intruders, may resort to such force to eject them as a reasonably cautious and prudent man would use under like circumstances, without incurring

criminal responsibility.—*State v. Cessna, Iowa*, 153 N. W. 194.

7. **Bail**—Waiver.—A prisoner, who applied to an acting police captain to fix his bail, and deposited cash in that amount, and thereby secured his release, waived objections to the want of the officer's authority to fix the bail and his failure to require a bond.—*Sausknecht v. Herting, Conn.*, 94 Atl. 368.

8. **Bailment**—Accidental Fire.—When a bailee of goods, injured in his possession, proves that such injury was caused by an accidental fire, not due to his own negligence, the burden of proof shifts to bailor to show that proper precautionary measures would have prevented destruction of goods in case of fire.—*Bricken v. Sikes, Ala.*, 68 So. 801.

9. **Bankruptcy**—Jurisdiction.—Under the Bankruptcy Act, and rem. & bal. Code wasa, § 5918, the bankruptcy court has jurisdiction to determine the disposition of funds in the hands of the trustee arising from a sale of community property.—*Gibbons v. Goldsmith, U. S. C. C. A.*, 222 Fed. 826.

10.—**Preference**.—A contract for the consignment of goods for sale is not a preference to the consignor, which is avoided by the bankruptcy of the consignee less than four months thereafter.—*Ellet-Kennell Snow Co. v. Martin, U. S. C. C. A.*, 222 Fed. 851.

11.—**Unincorporated Company**.—A trust association for investment purposes, created by an instrument of trust and in which the shareholders have the power to amend such instrument and to terminate the trust, held an "unincorporated company," within Bank. Act 1898, § 46, and subject to adjudication as a bankrupt thereunder.—*In re Associated Trust, U. S. D. C.*, 222 Fed. 1012.

12. **Bastards**—Evidence.—In a prosecution for adultery, the legitimacy of the child born in lawful wedlock is presumed until encountered by such evidence as proves to the jury's satisfaction that such sexual intercourse did not take place at any time when the husband could thereby be the father.—*State v. Shaw, Vt.*, 94 Atl. 434.

13. **Bills and Notes**—Renewal.—The defense of failure of consideration is not available to one who, with knowledge of the failure of consideration for the original note, thereafter executes a renewal note.—*Haglin v. Friedman, Ark.*, 177 S. W. 429.

14. **Brokers**—Commission.—A broker employed to procure a customer with whom the principal would enter into an option contract on terms agreed on between the principals need not consummate the deal and where the principal employs another broker therefor he is liable for a double commission.—*Leadville Mining Co. v. Hemphill, Ariz.*, 149 Pac. 384.

15. **Carriers of Goods**—Perishable Goods.—A carrier of potatoes in charge of the loading and transportation is liable for injuries from freezing.—*St. Louis, I. M. & S. R. Co. v. Hudgins Produce Co., Ark.*, 177 S. W. 400.

16.—**Rates**.—In establishing a rate, a carrier need not consider that branch alone for which the rate is applicable, but may take into consideration the cost of operation and rates prevailing over its entire system.—*New York Cent. & H. R. R. Co. v. Public Service Commission for Second District, N. Y.*, 109 N. E. 252.

17. **Carriers of Live Stock**—Assumption of Risk.—A shipper of live stock, who is transported on his shipping contract on condition that he feeds and cares for the stock and assumes responsibility for its escape from the car, is a passenger for hire, and the carrier cannot relieve itself from liability for his injury through its negligence.—*Norfolk Southern R. Co. v. Chatman, U. S. C. C. A.*, 222 Fed. 802.

18. **Carriers of Passengers**—Alighting.—A street car company, in selecting a reasonably safe place for landing its passengers, should make such selection with reference to passengers getting off the car while it is at rest.—*Bird v. Savannah Electric Co., Ga.*, 85 S. E. 621.

19.—**Contributory Negligence**.—Plaintiff, who stood close to the tracks, though she saw that a rapidly approaching interurban car would not stop, is guilty of contributory negligence.

and cannot recover for injuries received when her loose cloak caught on the car.—*Eckart v. Marion, B. & E. Traction Co., Ind.*, 109 N. E. 224.

20.—Proximate Cause.—A carrier is not liable for the death of a passenger, killed while resisting an officer attempting to arrest him at the conductor's request, since the resistance was the proximate cause.—*Chesapeake & O. Ry. Co. v. Whitaker's Adm'r., Ky.*, 177 S. W. 443.

21.—Warning.—The failure of a carrier to warn a passenger of the danger of riding in a gondola car because the passenger cars were crowded renders the carrier liable notwithstanding the passengers' negligence.—*Basey v. Louisiana Ry. & Navigation Co., La.*, 68 So. 824.

22.—Commerce.—Discrimination.—Unjust discrimination in matter of coal car distribution to a mine owner may be redressed by Interstate Commerce Commission, where the coal, although sold f. o. b. cars at the mines, was to be transported to other states.—*Pennsylvania R. Co. v. Clark Bros. Coal Min. Co.*, 35 S. Ct. 896.

23.—Interstate.—A brakeman on a pick-up freight running between points in the same state containing cars loaded with interstate freight, injured in setting a brake on an interstate car, held in interstate commerce within the federal Employers' Liability Act April 22, 1908.—*New York Cent. & H. R. R. Co. v. Carr*, 35 S. Ct. 780.

24.—Intoxicating Liquors.—Shipments into a state of intoxicating liquors intended for the personal use of consignees were not subjected to a law of such state forbidding carriers to bring intoxicating liquors into any dry territory by Webb-Kenyon Act March 1, 1913.—*Adams Ex. Co. v. Commonwealth of Kentucky*, 35 S. Ct. 824.

25.—Jurisdiction.—A state court has jurisdiction without action by Interstate Commerce Commission under Act Feb. 4, 1887, §§ 8, 9, 22, giving shippers new rights but preserving existing ones, which are not affected by Act June 29, 1906, of a suit by a shipper against the interstate carrier to recover damages by failure to furnish cars to a shipper within a reasonable time on demand under Hurd's Rev. St. Ill. 1913, c. 114, § 84.—*Illinois Cent. R. Co. v. Mulberry Hill Coal Co.*, 35 S. Ct. 760.

26.—Conspiracy.—Burden of Proof.—In action by a husband against near relatives of his wife for conspiracy to alienate her affections, he need not prove that the defendants formally agreed to effect a separation by common means, it being sufficient if it was shown that the defendants by their acts pursued the same object.—*Ratliffe v. Walker, Va.*, 85 S. E. 575.

27.—Elections.—A conspiracy of state election officers to omit returns from certain precincts at election of Congressmen from their count and from their return is indictable under Cr. Code, March 4, 1909, § 19.—*United States v. Mosley*, 35 S. Ct. 904.

28.—Constitutional Law.—Class Legislation.—Burns' Ann. St. § 286, construed to mean that an action for personal injuries shall survive to the personal representative of judgment plaintiff, dying while awaiting an appeal or during the continuance of an appeal is not invalid as class legislation.—*Cincinnati H. & D. Ry. Co. v. McCullom, Ind.*, 109 N. E. 206.

29.—Due Process of Law.—An order of a state railroad commission, directing railroad to erect in its stockyards in a specified village a scale without affording opportunity to abate any discrimination against such village because of scales in other villages, takes the railway company's property without due process of law.—*Great Northern Ry. Co. v. State of Minnesota ex rel. Railroad & Warehouse Commission*, 35 S. Ct. 753.

30.—Equal Protection of Laws.—Laws 1913, c. 367, regulating taxation of mineral rights and treating such rights and the owners thereof materially different from other real estate and owners held unconstitutional as violative of the provisions of the state and federal constitutions, guaranteeing equal protection of the law.—*State v. Donald, Wis.*, 153 N. W. 238.

31.—Food.—Sale of food preservatives containing toxic acid may be forbidden, as is done by Hurd's Rev. St. Ill. c. 197b, § 8, 22, as construed by the state court, without denying

the equal protection of the law.—*Price v. People of State of Illinois*, 35 S. Ct. 892.

32.—Race Segregation.—The race segregation ordinance of Louisville does not deprive the owner of his vested right of alienation, but merely takes away the probability of alienation to certain classes of customers.—*Harris v. City of Louisville, Ky.*, 177 S. W. 472.

33.—Railway Rates.—The exercise by a state of its power to fix street railway rates, notwithstanding municipal rate ordinance, does not deprive street railway company of its property without due process of law.—*Milwaukee Electric Ry. Light Co. v. Railroad Commission of Wisconsin*, 35 S. Ct. 820.

34.—Relief Association.—Burns' Ann. St. 1914, § 5308, providing that the rules of any railroad relief association requiring an employee becoming a member to agree to waive any claim to damages for injury or death, shall be void, held not unconstitutional as class legislation.—*Baltimore & O. S. W. R. Co. v. Hagan, Ind.*, 109 N. E. 194.

35.—Sleeping Car Berths.—Laws Wis. 1911, c. 272, prohibiting the letting down of an unoccupied upper berth in a sleeping car when lower berth is occupied, takes property without compensation, contrary to due process of law clause of Const. U. S. Amend. 14.—*Chicago M. & St. P. R. Co. v. State of Wisconsin*, 35 S. Ct. 869.

36.—Taxation.—The annual 2 per cent. privilege tax imposed by Act Pa. June 28, 1895 (P. L. 408), on gross premiums of foreign life insurance company from business within the state, may be levied on premiums paid to the company outside the state by citizens of the state, without rendering tax a taking of property without due process of law.—*Equitable Life Assurance Soc. of the United States v. Commonwealth of Pennsylvania*, 35 S. Ct. 829.

37.—Telephone Service.—Imposition on telephone company, under Kirby's Dig. Ark. § 7948, of penalties aggregating \$6,300 for its enforcement against a patron in arrears of a regulation not to furnish telephone service, takes the property of the company without due process of law.—*Southwestern Telegraph & Telephone Co. v. Danaher*, 35 S. Ct. 886.

38.—Contracts.—Building Material.—A bridge contractor can recover for materials and labor furnished under the contract, where the bridge collapsed just prior to completion because of a defect in the plans furnished by the owner.—*Penn. Bridge Co. v. City of New Orleans, U. S. C. C. A.*, 222 Fed. 727.

39.—Illegality.—That a firm has been organized to carry on an illegal business will not necessarily invalidate a cotton contract made by it.—*Anderson v. Cavanaugh & Bearden, Ga.*, 85 S. E. 606.

40.—Corporations.—By-Laws.—The holder of several thousand shares of stock by transfer on the corporate books and issuance of certificates, held entitled to act as a director, though merely a nominal owner, and though the by-laws require that each director shall own at least 1,000 shares of stock.—*Creighton v. Campbell, Colo.*, 149 Pac. 448.

41.—Fraud.—In the absence of fraud or concealment, shareholders who sold their stock to directors cannot recover, though their shares brought much less than their actual value; the directors not occupying a fiduciary relation.—*Shaw v. Cole Mfg. Co., Tenn.*, 177 S. W. 479.

42.—Stockholders.—A suit by a corporation which purchased a majority of another corporation's stock against such other corporation for a balance of account should be defended by the minority stockholders of such other corporation as the real parties in interest.—*Blake v. Blake & Knowles Steam Pipe Works, N. J.*, 94 Atl. 419.

43.—Courts.—Jurisdiction.—A suit to enforce the rights in the trust estate of persons claiming under the assignee of part of the beneficiary's interest in the testamentary trust, the corpus to be the property of the beneficiary when of age, is not within Judicial Code, § 24, governing suits to recover on a chose in action in favor of any assignee.—*Brown v. Fletcher*, 35 S. Ct. 750.

44.—Criminal Law.—Agent.—Where a person employed an agent to transport intoxicating

liquor within the corporate limits of a town in violation of an ordinance, he was guilty.—*Town of Hartsville v. McCall*, S. C., 85 S. E. 599.

45.—**Appeal and Error.**—An appeal from a conviction for murder in the first degree will not be dismissed for lack of prosecution, although more than three and one-half years have elapsed from the date of judgment, where both counsel for the state and for appellant, who were assigned by the Supreme Court, have been remiss in bringing the appeal to a hearing.—*People v. Sprague*, N. Y., 109 N. E. 247.

46.—**Death—Conscious Suffering.**—Recovery in action by personal representative of deceased railway employee under Employers' Liability Act of April 22, 1908, as amended April 5, 1910, may include damages for decedent's conscious suffering before death and damages for pecuniary loss of relatives or next of kin.—*Kansas City Southern R. Co. v. Leslie*, 35 S. Ct. 844.

47.—**Verdict.**—General verdict for plaintiff may be returned by jury in action by an administratrix under Employers' Liability Act for benefit of widow and minor children without apportioning the damages.—*Central Vermont R. Co. v. White*, 35 S. Ct. 865.

48.—**Deeds—Reservation.**—If the owner of a lot and the mineral rights conveys it by a description sufficient to convey the entire title, it will not be conclusively presumed from a reservation of mineral rights in the plat that his conveyance carries the surface right only.—*Hyde Park Inv. Co. v. Glenwood Coal Co.*, Iowa, 153 N. W. 181.

49.—**Descent and Distribution—Advancement.**—A presumption that a grant of 90 acres from a father to two minor children was an advancement may be overcome by surrounding circumstances and parol evidence of a judge who divorced the parents and procured the execution of the deed.—*Packard v. Packard*, Kan., 149 Pac. 404.

50.—**Emancipated Minor.**—The right of an emancipated minor to recover the rents during his minority from real property inherited from his father, but illegally sold by widow and guardian ad litem, is not defeated by the administrative authority vested by law in his mother.—*Longpre v. Quinones*, 35 S. Ct. 731.

51.—**Elections—Grandfather Clause.**—Conferring the right to register and vote at city election in Annapolis, as is done by Laws Md. 1908, c. 525, on all citizens who, prior to January 1, 1868, are entitled to vote in state, abridges the right to vote on account of race, color, or previous condition of servitude in violation of Const. U. S. Amend. 15.—*Myers v. Anderson*, 35 S. Ct. 932.

52.—**Literacy Test.**—The exemption from literacy test prescribed by 1910 amendment of Const. Okla. art. 3, § 4a, as condition for voting, is an abridgment of the right to vote on account of race, color, or previous condition of servitude, contrary to Const. U. S. Amend. 15.—*Guinn v. United States*, 35 S. Ct. 926.

53.—**Exemptions—Estoppel.**—Where a wife, after procuring a divorce awarding her her husband's personal property, claimed an automobile and proved it was exempt as used in her husband's business, held that she was not estopped or bound by her husband's representations to one to whom he mortgaged it that the car belonged to a corporation.—*Wickham v. Traders' State Bank*, Kan., 149 Pac. 433.

54.—**False Imprisonment—Judicial Officer.**—The mayor of a town held not to have been acting in a judicial capacity in arresting and imprisoning plaintiff, and therefore to be liable for false imprisonment.—*Poff v. Hamilton*, Iowa, 153 N. W. 146.

55.—**Fraud—Representations.**—Where the agent of the vendor recklessly stated the quantity of land without knowledge as to whether the statement was true, and intending thereby to defraud the purchaser, the vendor is liable for the damages thereby caused.—*Richards & Comstock v. Frederickson*, Iowa, 153 N. W. 151.

56.—**Frauds, Statute of—Collateral Liability.**—Upon surrender of a debt against another in consideration of a third person's promise to pay it, the primary debt is discharged, and only the promisor's original obligation remains, so that there can be no collateral liability, within the

statute of frauds.—*Harp v. Hamilton*, Tex., 177 S. W. 565.

57.—**Fraudulent Conveyances—Evidence.**—That a reputable attorney who drew a deed by a husband to his wife was alone responsible for the insertion of the recited nominal consideration must be considered in determining whether the deed is fraudulent as against creditors.—*Fewell v. Hall*, S. C., 85 S. E. 590.

58.—**Gas—Franchise.**—A gas company which accepted a franchise ordinance fixing maximum rate and authorizing gas to be snuff off from any consumer in arrears for more than 15 days could not require a \$5 deposit or add a penalty of 5 cents per 1,000 cubic feet for nonpayment by a certain time in the month.—*City of Columbus v. American Gas Co.*, Kan., 149 Pac. 402.

59.—**Guaranty—Extension of Time.**—Guarantor is not relieved from liability by the act of the payee in extending the time of payment beyond maturity, where no legal obstacle to the payee's enforcement of the original obligation against the maker is thereby presented.—*Clark v. United Grocery Co.*, Fla., 68 So. 766.

60.—**Guardian and Ward—Estoppel.**—A ward is not estopped from prosecuting a suit to surcharge and falsify his guardian's accounts, by a provision in a receipt for money paid, purporting to ratify all settlements of the guardian, where the ward was ignorant of such settlements.—*Vick v. Ferrell*, W. Va., 85 S. E. 549.

61.—**Gifts—Delivery.**—Where defendant claimed a gift of notes, and after the execution of a power of attorney, authorizing him to collect them, he returned them to a bank, receiving a receipt therefor, there was an absolute delivery.—*Thompson v. Thompson*, Iowa, 153 N. W. 196.

62.—**Highways—Proximate Cause.**—Plaintiff's driving his automobile over a bridge at a speed prohibited by statute, when he collided with defendant's negligently driven automobile truck, would not prevent his recovery, unless his violation of law was the proximate cause of his injuries.—*Coffin v. Laskau*, Conn., 94 Atl. 370.

63.—**Homicide—Threats.**—A threat made by defendant to kill is admissible, though deceased's name was not mentioned at the time, if it can be reasonably gathered from the evidence that deceased was then meant.—*Howe v. State*, Tex., 177 S. W. 497.

64.—**Husband and Wife—Alienation of Affections.**—To warrant recovery against wife's parents for alienating affections, the evidence must not only overcome the presumption that the parents were acting for the welfare and happiness of their daughter, but must establish malice.—*Ray v. Parsons*, Ind., 109 N. E. 202.

65.—**Indians—Title.**—Equitable title vested under Original Creek Agreement March 1, 1901, in heirs of a Creek allottee to be determined according to the Creek laws of descent, was not divested by Act May 27, 1902, or the Supplemental Creek Agreement June 30, 1902, § 6, which substituted the Arkansas laws of descent.—*Woodward v. de Graffenried*, 35 Sup. Ct. 764.

66.—**Tribal Lands.**—Act June 25, 1910, § 32, relating to deeds to tribal lands in the Five Civilized Tribes, makes the patented land part of the estate of the nominal patentee, and gives a title to the heir or other party named in the act as purchaser.—*Perryman v. Woodward*, 35 S. Ct. 830.

67.—**Infants—Constructive Fraud.**—The failure of a guardian ad litem for infant parties to call witnesses at the hearing is not constructive fraud which requires the vacating of a judgment entered by consent.—*Burke v. Northern Pac. Ry. Co.*, Wash., 149 Pac. 335.

68.—**Injunction—Cloud on Title.**—A lessor may be enjoined from creating a cloud on the title of the holder of an oil and gas lease, where it appears with reasonable certainty that such cloud will be created, unless prohibited.—*Castle Brook Carbon Black Co. v. Ferrell*, W. Va., 85 S. E. 544.

69.—**Discrimination.**—The remedy of consumers for discrimination in rates by a public service corporation is ordinarily by an action at law for damages, and not by injunction.—*St. Paul Book & Stationery Co. v. St. Paul Gaslight Co.*, Minn., 153 N. W. 262.

70. **Insurance—Acceleration of Death.**—That the insured's death may have been merely accelerated by a fall, and that a chronic malady contributed to his death, held not to necessarily preclude recovery on an accident policy.—*Hall v. General Accident Assur. Corporation, Ga.*, 85 S. E. 600.

71. **Judgment—Appeal and Error.**—The right of minor ward to obtain relief under the Hawaiian laws against his guardian obtaining in his own name an award of title to his ward's land was not concluded by an affirmance by Supreme Court of a decree of Hawaiian Supreme Court, where the attack on guardianship was not included in finding of fact certified to federal Supreme Court.—*Kapiolani Estate v. Atchery, 35 S. Ct. 832.*

72. **Landlord and Tenant—Lease.**—Under farm lease giving lessor one-half of all crops "payable as follows: One-half of the small grain and one-half of the corn and \$5 per acre for pasture land," lessor held entitled to one-half of the hay crop.—*Verbeck v. Peters, Iowa*, 153 N. W. 215.

73. **Larceny—Elements of.**—Killing and skinning of cow and selling of hide, the carcass being left where she was killed, held to constitute larceny of the cow.—*Flowers v. State, Fla.*, 68 So. 754.

74. **Livery Stable Keepers—Bailment.**—The delivery of a horse or vehicle to a livery stable keeper for keeping for hire creates a mutual benefit bailment which renders the bailee liable for injury or loss resulting from his failure to take "ordinary care" of the property.—*Bricken v. Sikes, Ala.*, 68 So. 801.

75. **Logs and Logging—Title.**—Sale of standing timber to cut and remove within a specified time does not pass absolute title until purchaser cuts and removes timber within time allowed.—*Blackstone Mfg. Co. v. Allen, Va.*, 85 S. E. 568.

76. **Malicious Prosecution—Burden of Proof.**—A plaintiff to maintain an action for malicious prosecution must show the return of an indictment, that defendant instigated the indictment, that the prosecution was without probable cause, and was malicious, and resulted in plaintiff's discharge.—*Johnson v. Brady, Ind.*, 109 N. E. 230.

77. **Master and Servant—Assumption of Risk.**—A mechanic killed while riding an automobile in a race held not to have assumed the risk of a latent defect in the roadway.—*National Motor Vehicle Co. v. Kellum, Ind.*, 109 N. E. 196.

78. **Assumption of Risk.**—Under the federal Employers' Liability Act, held, that a fireman's assumption of risk through his contributory negligence in not seeing a danger light at an open switch could not preclude him from recovering for injuries from a collision due to the switch being negligently left open.—*Hackney v. Missouri, K. & T. Ry. Co., Kan.*, 149 Pac. 421.

79. **Assumption of Risk.**—Where an employee was directed by his master to do unaccustomed work not contemplated by his employment, it is a question of fact whether the servant, in obeying such orders and performing the work, assumed the risks.—*American Steel Foundries Co. v. Carbone, Ind.*, 109 N. E. 220.

80. **Contributory Negligence.**—A railroad, sued for injuries to a switchman by a fall from the refrigerator car by the act of messenger in charge in leaving the door of the ice bunker open, cannot complain of instruction that carrier could not escape liability because the messenger left the opening uncovered but the jury could consider the messenger's control of the car in determining carrier's negligence and plaintiff's contributory negligence.—*Texas & P. R. Co. v. Murphy*, 35 S. Ct. 779.

81. **Course of Duty.**—One having the care and custody of a stallion so negligently used that he died held liable for negligence of servant in whose custody he had placed the stallion if the injury occurred in the performance of the servant's duty.—*Van Dyk v. Mosterd, Iowa*, 153 N. W. 266.

82. **Interstate Commerce.**—Railroad fireman on switching engine attached to intrastate

car preliminary to handling an interstate car held not "engaged in interstate commerce," so that there might be a recovery under the state law.—*Louisville & N. R. Co. v. Parker's Adm'r, Ky.*, 177 S. W. 465.

83. **Safe Place.**—While it is the primary duty of the master to use reasonable care to provide the servant with a safe place in which to work, when that has been done, he is not liable for an unsafe condition resulting from the manner in which the workmen carry on their work.—*Gulf Transit Co. v. Grande, U. S. C. C. A.*, 222 Fed. 817.

84. **Workmen's Compensation Act.**—The provisions of the Workmen's Compensation Act relative to allowing redemption where the payments are periodical, and allowing an employee to obtain judgment for 80 per cent. in case of doubt as to the security, held inapplicable, where the court enters judgment for a lump sum in the first instance.—*Roberts v. Charles Wolff Packing Co., Kan.*, 149 Pac. 413.

85. **Mortgages—Assumption of Debt.**—Where the purchaser of mortgaged property assumes the mortgage, the mortgagor, without having paid the deficiency judgment, may recover from him the amount unpaid after the sale of the property on foreclosure.—*Morian v. Loch, Kan.*, 149 Pac. 431.

86. **Municipal Corporations—Notice.**—Where defendant city, because of the invalidity of its contract for street work, was in contemplation of law doing the work through the contractor's servants as its own, it was charged with notice of the negligence of such servants in leaving dynamite in the street.—*Davis v. City of Wenatchee, Wash.*, 149 Pac. 337.

87. **Permits.**—Cities may grant a permit for the use of a portion of the street for ingress to floors below the level, but such permit is revocable at any time.—*Callahan v. City of Nevada, Iowa*, 153 N. W. 188.

88. **Proximate Cause.**—Driving on wrong side of street in violation of ordinance held not to impose liability for injuries, unless such negligence was the proximate cause of the injury.—*Baillargeon v. Myers, Cal.*, 149 Pac. 378.

89. **Navigable Waters—Patent.**—A tract of about 40 acres lying between platted traverse lines of a lot in a fractional section and the waters of a navigable stream held not included in a patent for lot calling for 12.84 acres issued to the occupant who did not for more than 30 years occupy or exercise any possession outside the traverse lines.—*Producers' Oil Co. v. Hansen*, 35 S. Ct. 755.

90. **Negligence—Child.**—In determining the negligence of a boy of 11 in handling dynamite, the jury should make allowances for his youth, and inquire whether he exercised such care as might reasonably be expected of one of his age, intelligence, and experience under like circumstances.—*Davis v. City of Wenatchee, Wash.*, 149 Pac. 337.

91. **Partnership—Test of.**—An agreement by a building contractor to pay his superintendent of construction a salary and in addition as a bonus a share of the profits of the contract held not to create a partnership.—*Bankers' Surety Co. v. Cleveland, Ohio*, v. Maxwell, U. S. C. C. A., 222 Fed. 797.

92. **Partition—Trustee.**—Executor taking one-half undivided interest in land in trust, and who himself owned the other undivided one-half, could not purchase on his own bill for partition without permission obtained before sale, and could not by petition supplement sale and obtain confirmation thereof.—*Roderer v. Fox, N. J.*, 94 Atl. 393.

93. **Physicians and Surgeons—Malpractice.**—A surgeon should exercise reasonable care and skill in removal of gauze pads necessary to a successful operation, and may not relieve himself of liability for leaving pad in wound by any custom requiring attending nurse to count those used and removed.—*Barnett's Adm'r v. Brand, Ky.*, 177 S. W. 461.

94. **Principal and Agent—Commission.**—An agent, who effected a contract for the sale of specified roofing which was not then in existence, is entitled to his compensation, where the principal furnished the buyer a different

roofing and collected the price therefor.—*Long-Lewis Co. v. Ewing, Ala.*, 68 So. 794.

95.—**Scope of Agency.**—Seller of whiskey which paid revenue tax, at buyer's request, held to act as buyers' agent and entitled to possession until reimbursed, both under letters from the buyer and independent of such letters.—*Jessen Liquor Co. v. Phoenix Distillery Co.*, Iowa, 153 N. W. 148.

96.—**Scope of Agency.**—Where one appoints an agent to act on his behalf in the receipt and disbursements of a fund, the transaction is complete, as to the debtor, when the fund reaches the hands of the agent.—*Golden v. O'Connell*, W. Va., 85 S. E. 533.

97.—**Public Lands.**—Parties.—United States is not a necessary party to a suit by entryman whose entry has been rejected by the land department in favor of the subordinate entryman, to charge the latter with a trust in his favor, because a patent from the United States is involved.—*Daniels v. Wagner*, 35 S. Ct. 740.

98.—**Railway Land Grants.**—The United States is not precluded from enforcing covenant in railway land grants under Act April 10, 1869, and Act May 4, 1870, § 4, as to sales to actual settlers, on theory of waiver or estoppel, where the government's position was that enforcement of such covenant was for the courts, and not for legislative and executive action.—*Oregon & C. R. Co. v. United States*, U. S., 35 S. Ct. 908.

99.—**Railroads.**—Fences.—The owner of horses, which escaped from the field where they were pastured onto a railroad track and were there killed, is not negligent if his fences were reasonably secure and the horses escaped without his fault or knowledge.—*Chicago & E. R. Co. v. Leiter, Ind.*, 109 N. E. 213.

100.—**Notice.**—A railroad company need not give notice of the movement of its trains except where it has reason to anticipate that a person will be on the track.—*Cunningham v. Philadelphia & R. Ry. Co., Pa.*, 94 Atl. 467.

101.—**Ordinary Care.**—A railroad company is liable to a shipper's servants for injuries received from defects in a car which it could have discovered by ordinary care, where the shipper himself by ordinary care did not discover the defects.—*Louisville & N. R. Co. v. Weldon*, Ky., 177 S. W. 459.

102.—**Removal of Causes.**—Diversity of Citizenship.—Where a suit, removable on the ground of diversity of citizenship, is brought in a state court of a state where neither party resides, the "proper district" into which the cause is removable is not the district in which the suit is brought, but the district in which defendant resides.—*Park Square Automobile Station v. American Locomotive Co.*, U. S. D. C., 222 Fed. 979.

103.—**Sales.**—Contract.—The parties to a contract for the sale of goods on credit may, before acceptance of the goods, change their contract so as to make it a consignment for sale, and the creditors of the consignee acquire no interest in the goods so shipped.—*Ellettsendall Shoe Co. v. Martin*, U. S. C. A., 222 Fed. 851.

104.—**Damages.**—A maker of a note given to secure the price of a warranted machine sold to a third person held entitled to recover from the seller damages resulting to him from defective working of the machine while used by the buyer in threshing the maker's grain.—*Geo. O. Richardson Machinery Co. v. Brown*, Kan., 149 Pac. 434.

105.—**Transfer of Title.**—Though the acts of a buyer in paying a sight draft and unloading a shipment of apples operated to transfer title to it, it had a right, on discovering the damaged condition of the shipment, to rescind its purchase by acting promptly.—*Minot Grocery Co. v. Flathead Produce Co.*, N. D., 153 N. W. 284.

106.—**Shipping.**—General Average.—Under the maritime law as recognized and enforced in England, Germany, and the United States, general average is payable by cargo, notwithstanding negligence of the ship which occasioned the peril, if the charter party or bill of lading contains a clause exempting from negligence.—*Ralli v. Societa Anonima di Navigazione a Vapore "G. L. Premuda"*, U. S. D. C., 222 Fed. 994.

107.—**Street Railroads.**—Presumption.—Until due prudence, suggested by circumstances open to observation, forbids further reliance on presumption, motorman held entitled to presume that adult pedestrian or traveler will not subject himself to danger or will leave zone of danger.—*Mobile Light & R. Co. v. Roberts*, Ala., 68 So. 815.

108.—**Presumption.**—A motorman in charge of a street car is entitled to assume that a traveler will use due care for his own safety, and need not stop the car until he sees the other in apparent danger.—*Arpagaus v. Washington Water Power Co.*, Wash., 149 Pac. 346.

109.—**Sunday.**—Legislative Policy.—An order requiring the operation of a Sunday local passenger train held unreasonable and void as requiring Sunday labor contrary to the legislative policy manifested by Gen. St. 1913, § 8753.—*State v. Great Northern Ry. Co.*, Minn., 153 N. W. 247.

110.—**Taxation.**—Incomes.—The income from sales of goods purchased outside the state and sold to persons without the state is not income derived from business transacted within the state, and is not taxable under St. 1911, § 1087m2, subd. 3.—*United States Glue Co. v. Town of Oak Creek, Wis.*, 153 N. W. 241.

111.—**Torts.**—Joint Tort-feasors.—Under a petition alleging that the defendant, plaintiff's husband, and others jointly conspired in causing plaintiff to be committed to an insane asylum, the defendants were joint tort-feasors, and as such jointly and severally liable, whether acting in concert or independently.—*Rogers v. Rogers*, Mo., 177 S. W. 382.

112.—**Trade Unions.**—Expulsion of Member.—Neither the executive board of an unincorporated labor association composed of local unions, nor the association, is liable for an erroneous decision of the board as to expulsion of member, when not guilty of fraud or bad faith.—*Schouten v. Alpine, N. Y.*, 109 N. E. 244.

113.—**Trusts.**—Corporate Stock.—A trust in corporate stock held to fail both as to dividends and principal and a resulting trust in favor of the donor to have arisen on the death, before January 1, 1910, of the beneficiary in a trust created in favor of the donor's married daughter by an instrument dated March 27, 1909.—*Chater v. Carter*, 35 S. Ct. 859.

114.—**Vendor and Purchaser.**—Attorney's Fee.—A vendor cannot recover an attorney's fee provided for in vendor's lien notes on default in making payments, where no part of the debt was due at the time suit was brought.—*Humphreys v. Douglass, Tex.*, 177 S. W. 569.

115.—**Constructive Notice.**—Registration of deed after adoption of Laws N. C. 1885, c. 147, makes it valid as against persons who do not claim under grantor therein, but under his grantor by deed registered in meantime, where they had constructive notice of deed to grantor in first deed by registration in 1869, and Curative Act 1869-70, c. 32.—*United States v. Hiwassee Lumber Co.*, 35 S. Ct. 851.

116.—**Warehousemen.**—Action on Contract.—A misrepresentation by a warehouseman as to the safety of its warehouse, made after a contract for storage had been agreed on, was not an inducement for the contract, so as to give the owner of the goods a right of action on the contract.—*Bethea-Starr Packing & Shipping Co. v. Mayhen*, Ala., 68 So. 814.

117.—**Wills.**—Children Defined.—The word "children" as used in a will does not include grandchildren, unless it appears from the context that testator so intended, or such meaning is necessary to carry out his manifest intention.—*In re Scull's Estate*, Pa., 91 Atl. 474.

118.—**Contests.**—Contestants, who admitted the due execution, cannot object to the probate of a will without proof of execution, and it will be presumed that such proof was taken as to other interested parties.—*In re Livingston's Estate*, Iowa, 153 N. W. 200.

119.—**Woods and Forests.**—Regulations.—The land department possesses no general discretion to reject entries on public land selected under Act June 4, 1897, and the departmental regulations in lieu of lands relinquished in a forest reservation, or to award the lands to subsequent applicants.—*Daniels v. Wagner*, 35 S. Ct. 740.